Technical Guidance

Pesticides Act and Ontario Regulation 63/09 Cemeteries

May 2011

Purpose
This technical guidance provides regulatory information related to cemeteries. Ontario's cosmetic pesticides ban took effect April 22, 2009. The requirements of the ban are detailed in the Pesticides Act, which was amended by the Cosmetic Pesticides Ban Act, 2008 and in Ontario Regulation 63/09 (O. Reg. 63/09).

Update
Subsection 74(3) of O. Reg. 63/09 specifies that as of April 22, 2011, warning signs (i.e. Sign D and F) can no longer deviate from the versions of the signs referred to in subsection 1(5) of O. Reg. 63/09. In other words, if warning signs are required to be posted to provide public notice of a land extermination, the law requires that the version of the warning signs posted on the MOE's website be used.

Classification of pesticides
A pesticide product must be registered by Health Canada's Pest Management Regulatory Agency and classified by the Ministry of the Environment (MOE) to be sold and used in Ontario (please refer to s.6 of the Pesticides Act and s.9 of O. Reg. 63/09). Products must be used according to label directions and for purposes allowed under the ban.

As set out in subsection 4(5) of O. Reg. 63/09, Ontario has established a pesticide classification system consisting of eleven classes under provincial legislation as set out below.

- Class 1 pesticides are products intended for manufacturing purposes
- Class 2, 3 and 4 pesticides are restricted or commercial products
- Class 5 and 6 pesticides are domestic products intended for household use
- Class 7 pesticides are controlled sale products (domestic or restricted)
- Class 8 pesticides are domestic products that are banned for sale and use
- Class 9 pesticides are ingredients in products for use only under exceptions to the ban
- Class 10 pesticides are ingredients in products for the poisonous plant exception
- Class 11 pesticides are ingredients in products for cosmetic uses under the ban

Allowed Pesticide Uses
Full-time cemetery employees can use domestic pesticides in Class 5, 6 or 7 to protect health or safety to control pests such as:

- wasps that sting or mosquitoes that bite
- plants that are poisonous to humans by touch, such as poison ivy and giant hogweed

Under the ban, full-time cemetery employees can use Class 5 or 6 products containing Class 11 pesticides (biopesticides and certain lower risk pesticides) to manage pests on lawns and gardens in the cemetery. Refer to the MOE's Managing Pests in Lawns and Gardens fact sheet for a complete list of classified products.

Alternatively, cemetery owners can hire or contract a landscape licensed exterminator authorized to use Class 3 or 4 products containing Class 11 pesticides on cemetery property.

Controlled Sale (Class 7) Products
Beginning April 22, 2011, controlled sale (Class 7) products will not be readily accessible on store shelves and consumers will need to ask vendor staff for assistance if purchasing these products. Licensed vendors must continue to provide consumers with a handout advising that certain uses are prohibited under the ban.

Domestic products in Class 7 have both cosmetic and non-cosmetic uses. Under the ban, the cosmetic uses of these products are not allowed. For example:

- Class 7 products cannot be used on driveways, patios, lawns or gardens to control weeds or other vegetation as these are cosmetic uses, but can be used to control plants poisonous to humans by touch (e.g., poison ivy, giant hogweed).
- Class 7 products cannot be used to control lawn or garden pests as these are cosmetic uses but can be used to control biting or stinging pests as directed on the label. Class 7 products can be used inside cemetery buildings or immediately around the outside perimeter to control indoor pests as directed on the label.

Pesticide Use Notification for Class 11 Pesticides
A full-time cemetery employee is required to post a non-residential area notice sign (Sign E) when using a Class 11 pesticide on non-residential area land as a land extermination to notify visitors and passers-by of pesticide use (examples of signs are available on the MOE's website). A landscape licensed exterminator is also required to post a notice sign to notify the public that Class 11 pesticides have been used on land including lawns and gardens.

Structural Pest Control in a Cemetery
A full-time cemetery employee may purchase and use Domestic products in Class 5, 6 or 7 on cemetery property indoors or around the perimeter of buildings and structures to control structural pests (e.g., wasps). A cemetery employee who holds a structural exterminator licence may purchase and use Class 2, 3, 4, 5, 6 or 7 products for a structural extermination on cemetery property.

Arboriculture Exception
There is an arboriculture exception for the use of a Class 9 pesticide to maintain the health of trees. The following uses are permitted under the arboriculture exception:

- A full-time cemetery employee injecting a Class 5, 6 or 7 product that contains a Class 9 pesticide into a tree;
- A landscape licensed exterminator injecting a Class 2, 3, 4, 5, 6 or 7 product that contains a Class 9 pesticide into a tree;
- A landscape licensed exterminator applying any product that contains a Class 9 pesticide directly to a tree, or a full-time cemetery employee applying a Class 5, 6 or 7 product that contains a Class 9 pesticide directly to a tree, if the pesticide is used to maintain the health of the tree.

A landscape licensed exterminator injecting a Class 2, 3 or 4 product that contains a Class 9 pesticide into a tree or applying any product that contains a Class 9 pesticide directly to a tree for the purpose of maintaining the tree's health must first obtain a written opinion from a professional tree care specialist stating that the use of the pesticide, as part of an integrated pest management strategy, is necessary to maintain the health of the tree. **Note**: pests damaging the fruit of a tree would not impact the health of the tree.

In addition, landscape licensed exterminators are required to provide advance written notice to the occupants of all residential properties that abut the area where the tree is located. Warning signs indicating that a Class 9 pesticide has been used must also be posted. **Note**: the tree is considered to be the application area.

This written notice must be provided one to seven days in advance of the application and includes:

- Date of the extermination
- Description of the application area
- Pest to be exterminated
- Name of the pesticide and its registration number
- Ingredient of the pesticide to be used
- Contact phone number of a representative of the person who will use the pesticide

Other Legislative Requirements Exception
An exception to the ban on use of Class 9 pesticides is provided for the purpose of complying with a requirement under other federal or provincial legislation. For example, a weed inspector has authority to issue an order to destroy a noxious weed which is negatively affecting agricultural land, as listed under Regulation 1096 made under the Weed Control Act. The written order will list the weed(s) to be controlled and the exact location to be treated. A person has the responsibility to ensure that, before he or she uses a Class 9 pesticide for this excepted use, he or she is complying with the written order. Furthermore, this exception only applies if the use of a Class 9 pesticide is the only effective and practical means of complying with the order.

The Weed Control Act is under the jurisdiction of the Ontario Ministry of Agriculture, Food and Rural Affairs. To obtain contact information for the weed inspector in your area, get in touch with your local municipality, region, district or county.

Pesticide Use Notification for Class 9 and 10 Pesticides
A full-time cemetery employee and a landscape licensed exterminator is required to post a non-residential area warning sign (Sign F) when using a Class 9 or 10 pesticide on non-residential area land in a land extermination in order to notify visitors and passers-by of pesticide use (examples of signs are available on the MOE's website).

Proper Disposal
Class 8 products are banned for use and should be taken to a local municipal hazardous or special waste collection site for proper disposal. To find the closest waste collection location, contact your municipality or alternatively go to Stewardship Ontario for a list of waste collection sites and check if they handle pesticide waste. Empty containers of Class 5, 6 or 7 products can be wrapped in newspaper and disposed of with other household garbage.

Compliance and Enforcement
To report non-compliance of pesticide use, please contact your MOE District Office during regular business hours. After business hours, call the MOE's Pollution Hotline at 1-866-MOE-TIPS (1-866-663-8477).

For more information:
Visit MOE's website for additional information on topics such as:
- Pesticide signage
- Pesticide classes and database
- Technical Guidance Pesticides Act and Ontario Regulation 63/09 Landscape Licensed Exterminators

A number of fact sheets and suggestions on caring for lawns and gardens are available on the MOE's website for specific audiences.

Questions about the cosmetic pesticides ban can be directed to the MOE's Public Information Centre at 1-800-565-4923 or 416-325-4000 (press 0 to talk to an information officer).

This technical guidance is for informational purposes only and should not be construed as legal advice. Interested parties are advised to refer to the Pesticides Act and Ontario Regulation 63/09 to address specific circumstances.

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